Supreme Court of the United States.

No. 251.—October Term, 1904.

The United States ex rel. Martin A. Knapp, Judson C. Clements, James D. Yoemans, Charles A. Prouty, and Joseph W. Fifer, Interstate Commerce Commissioners, Plaintiffs in Error, vs. The Lake Shore and Michigan Southern Railway Company.	In error to the Circuit Court of the United States for the Northern District of Ohio.

[April 10, 1905.]

Mr. Justice McKenna delivered the opinion of the Court.

Petition for mandamus filed in the Circuit Court of the United States for the Northern District of Ohio by the Interstate Commerce Commissioners against the Lake Shore and Michigan Southern Railway Company. The railway company moved to dismiss the petition on the ground that the court had no original jurisdiction to issue a writ of mandamus. The motion was granted and the writ dismissed. A certificate was duly made showing that a question of jurisdiction was in issue, and recites that the court acted not only on the motion of the railroad but on its own motion in dismissing the petition for want of jurisdiction.

The petition alleges that the railroad company is a corporation created by the laws of the States of New York, Pennsylvania, Ohio, Michigan, Indiana and Illinois, and has its principal place of business in the State of Ohio, and is a common carrier engaged in interstate commerce, and as such is subject to the provisions of the act of Congress to regulate commerce.

That under section 20 of said act the Interstate Commerce Commission is authorized to require any common carrier subject to the act to make reports of certain matters and things, and in pursuance thereof the commission made an order on the 3d of June, 1903, prescribing the manner and form in which said reports should be made and the contents thereof, and directed each common carrier to file the same on or before the 15th. A copy of the order was served on the railroad company, but the company failed and neglected to make out and return a report in full, in that it failed to set forth in the report made and returned by it the data or information called for, namely, "the tonnage, ton—mileage, earnings and receipts per ton per mile on grain, hay, cotton, live stock, dressed meats anthracite coal, bituminous coal, and lumber carried in carload lots;

and that said data or information required by the commission to be given in said report by respondent is necessary to enable the commission to perform the duties and carry out the objects for which it was created, in the interest of the public, and that promptness by carriers in furnishing the same on or before the 15th day of September of each year, as required by the commission, is essential for the purpose, among others, of enabling the commission to make a full and complete annual report to Congress, which, by section 21 of said act to regulate commerce, is required to be transmitted to said body on or before December 1st of each year."

It is also alleged that there is no adequate remedy except that afforded by mandamus.

It is admitted that under the Judiciary Act of 1789, (1 Stat. 73,) and the act of 1875, as construed by this court, a Circuit Court of the United States has no jurisdiction of an original proceeding seeking relief by mandamus. And counsel, not to minimize the admission, quotes the cases in which that has been laid down and the text books which have expressed the doctrine as settled. But, it is suggested, that under the act of 1887, (24 Stat. 552,) a different ruling should be made. No change in language is pointed out which would justify such change in ruling, but we are urged to that radical course in view of the modern development of proceedings by mandamus, and the very great importance of the remedy thereby. We are not impressed by the invocation. We are unable to understand how language conferring jurisdiction on a court can take a new meaning from the circumstances suggested. Difference in remedies is conspicuous in our jurisprudence, and some remedies are of that nature that they can be enforced only under exceptional circumstances and under special grants of power. Of this kind is mandamus, and if Congress had intended by the act of 1887 to confer power on the Circuit Courts to issue mandamus in an original proceeding Congress would not have employed the language which had been construed from the foundation of the Government not to give such jurisdiction. We adhere, therefore, to the prior cases.

2. Congress has undoubtedly power to authorize a Circuit Court to issue a mandamus in an original proceeding. (*Kendall* v. *United States*, 12 Pet. 322; *United States* v. *Schurz*, 102 U. S. 378.) But has Congress done so, as contended, by sections 12 and 20 of the Interstate Commerce Act as amended? Under section 12 the commission is given the authority to inquire into the management of the business of common carriers subject to the act, and have the right to obtain from the carriers full and complete information to enable it to perform its duties. It is also authorized to enforce the provisions of the act. By section 20 the commission may require annual reports and fix the time and prescribe the manner in, which such reports shall be made. And it is made the duty of any district attorney of the United States, to whom the commission may apply, to

institute in the proper court and to prosecute under the direction of the Attorney General all necessary proceedings for the enforcement of the provisions of this act. It is hence contended that the power of the commission to require the report stated in the petition is undoubted, and having power to order the report to be made the commission has the power to enforce obedience to the order.

But in what way? Manifestly only in such way as the courts have jurisdiction to give. All powers are given in view of that jurisdiction, and the amendments of the Interstate Commerce Act are so framed. Jurisdiction to issue mandamus is conferred by section 6, to enforce the filing or publishing by a common carrier of its schedules or tariffs of rates, fares and charges. And such jurisdiction is also given to the Circuit Courts and District Courts upon the relation of any person or persons, firm or corporation, alleging a violation of any of the provisions of the act which prevents the relator from having interstate traffic moved on terms as favorable as any other shipper. The remedy is expressly made cumulative of the other remedies provided by the act. It is clear, therefore, when Congress intended to give the power to issue mandamus it expressed that intention explicitly. Such power cannot be inferred from the grant of authority to the commission to enforce the act or from the direction to district attorneys or the Attorney General to institute "all necessary proceedings for the enforcement of the provisions" of the act (section 12). The proceedings meant are, as we have said, those within the jurisdiction of the court. And special remedies are given. For instance, by section 16 a summary proceeding in equity is authorized, and the form of the ultimate order of the court may be that of a "writ of injunction or other proper process, mandatory or otherwise."

Without attempting now to define the extent of that section, we may say, it seems adequate to enable the commission to enforce any order it is authorized to make.

Judgment affirmed.

Mr. Justice HARLAN dissented.

True copy.

Test:

Clerk Supreme Court, U. S.